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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,213	07/18/2003	Carlos Duarte	50228/MEG/F314	4675

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary	Application No. 10/622,213	Applicant(s) DUARTE ET AL.	
	Examiner Khoah D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6 and 8-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>07/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I and Subspecies B in the reply filed on 01/04/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1, 2, 5, 6 and 8-23 are readable on the elected Species I and Subspecies B. Claims 3, 4 and 7 has been withdrawn from further consideration as being drawn to the non-elected invention.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spa cover is moved downward behind the spa as recited in claim 16 and the spa cover is completely behind the spa as recited in claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 5, 6 and 8-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite as to whether applicant intends to claim the subcombination of a hinge assembly or the combination of a hinge assembly and a conventional spa with a spa cover. The preamble of claim 1 only calls for a hinge assembly. However, throughout the body of the claim, elements of the hinge assembly are inferentially connected to a conventional spa cover. For example, lines 3-1 of claim 1 calls for a hinge assembly comprising a mounting bracket and a support arm; however, in line 8, the support arm is defined as "attached on an outside surface..." of a conventional spa cover which is the intended environment. Should applicant intend to claim to cover only the subcombination, the examiner suggests language such "adapted

to be" when referring to structural connection of the subcombination to its environment. For example, line 8 could be amended such as "adapted to be attached...". Should applicant intend the claim to cover the combination, the examiner suggests amending to preamble such as "A hinge assembly in combination with a spa cover of a spa...".

Claims 2, 5, 6 and 8-13 depend on claim 1 and are likewise indefinite.

Regarding claims 16 and 17, it is unclear what structural limitation applicant intends to cover when claims 16 and 17 call for "the spa cover moved downward or completely behind the spa". Such limitations do not have any detailed explanation in the instant specification. As disclosed in the instant specification, the support arm is attached to the spa cover using a metal plate that either is fixed by tape or screw to the side of the spa (see Fig. 10 of the instant specification). If that is the case, how is the spa cover is capable of being moved downwardly (by rotation) behind the spa. And such lack of support renders the claims indefinite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5, 6, 8, 9, 14, 16 and 17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes (5950252).

Regarding claim 1, the Fettes reference discloses a spa (10) having a spa cover (16). The spa cover is attached to a hinge assembly (Figs. 15 & 16). The

hinge assembly includes a mounting bracket (202) disposed near the top of the spa, a support arm (22) pivotally coupled to the mounting bracket about an axis of rotation (at 29) and attached on the outside surface of the spa cover (Fig. 1 show element 22 attached to the outer surface of the spa) at a vertical offset from the axis of rotation when the spa is in the fully closed position (the dotted configuration at 18" in Fig. 1), and spring member (32) disposed between the mounting bracket and the support arm. As schematically shown in Figure 15, the spring member forms an angle with respect to the top of the spa when the spa cover is in the fully open position (when the support arm is in the vertical position as shown in Fig. 15). Even though the Fettes reference does not specifically disclose that the spring member forms an angle of less than approximately 45 degrees, it would have been obvious to one of ordinary skill in the art to at the time the invention was made to employ such angle degrees for the spring member since discovering an optimum value for degrees of angle involve only routine skill in the art especially since the spring member (as shown in Figure 15) of Fettes does form an angle of less than approximately 45 degrees.

Regarding claim 2, the Fettes reference also DIFFERS in that it does not specifically disclose that the spring member forms an angle of between approximately 10 degrees and approximately 20 degrees as claimed. It would have been obvious to one of ordinary skill in the art to at the time the invention was made to employ such angle degrees for the spring member since discovering an optimum range for degrees of angle involve only routine skill in

the art especially since the spring member (as shown in Figure 15) of Fettes appears to form an angle of between approximately 10 degrees and approximately 20 degrees.

Regarding claim 5, the support arm further includes an elongate member (at 24) attached along a side of the spa cover, a short member (at 25) which is pivotally coupled to the mounting bracket and a connecting member (the bent portion) between the elongate member and the short member, wherein the connecting member has a curvature (Fig. 15).

Regarding claim 6, as illustrated in Figure 15, the mounting bracket is mounted on a support bracket (at 206) that is attached to the side of the spa.

Regarding claim 8, the Fettes reference also DIFFERS in that it does not specifically include a gas spring as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Fettes hinge assembly by employing a gas spring. Such modification would be considered a preferred choice of a biasing mechanism on the basis of its suitability especially since the use of either a spring or a gas spring for the hinge assembly of a spa cover lifting mechanism is relatively known in the art (see cited reference).

Regarding claim 9, the hinge assembly also includes an attachment located (at 38) between the spring member and the support arm that can be adjusted.

Claim 14 recites limitations that are substantially similar to claim 1 which has been rejected as discussed supra.

Regarding claims 16 and 17, as best understood, the spa cover will be raised to an upright position and then completely moved downward behind the spa as schematically shown in Figure 2.

7. Claims 10-12, 15, 18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fettes (as discussed above) in view of Brady (6795984).

Regarding claim 10, the Fettes reference DIFFERS in that it does not specifically include a metal plate as claimed. Attention, however, is directed to the Brady reference which discloses another hinge assembly for a spa cover having a support arm (1,9) attached to the spa cover (15) via a metal plate (5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Fettes hinge assembly by employing a metal plate in view of the teaching of Brady. Such modification would be considered a substitution of one functionally equivalent spa cover connecting mechanism for another within the spa cover lifting mechanism art that would work equally well on the Fettes device.

Regarding claims 11 and 12, the Brady reference also discloses that the metal plate is affixed to the spa cover using adhesive i.e. double sided tape and/or other conventional techniques such as bolting (with bolt or screw) through the hole formed on the plate (as schematically shown in Figure 1).

Claim 15 recites the limitations that are substantially similar to claims 11 and 12 which have been rejected as discussed supra.

Regarding claims 18-23, the method as claimed would be inherent during the normal use and operation of the modified Fettes device.

Allowable Subject Matter

8. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perry was cited to show a hinge assembly for a spa cover having either a spring or a gas spring for biasing the support arm to lift or lower the spa cover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Patent Examiner
Art Unit 3751

HK
03/14/05